TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 410.

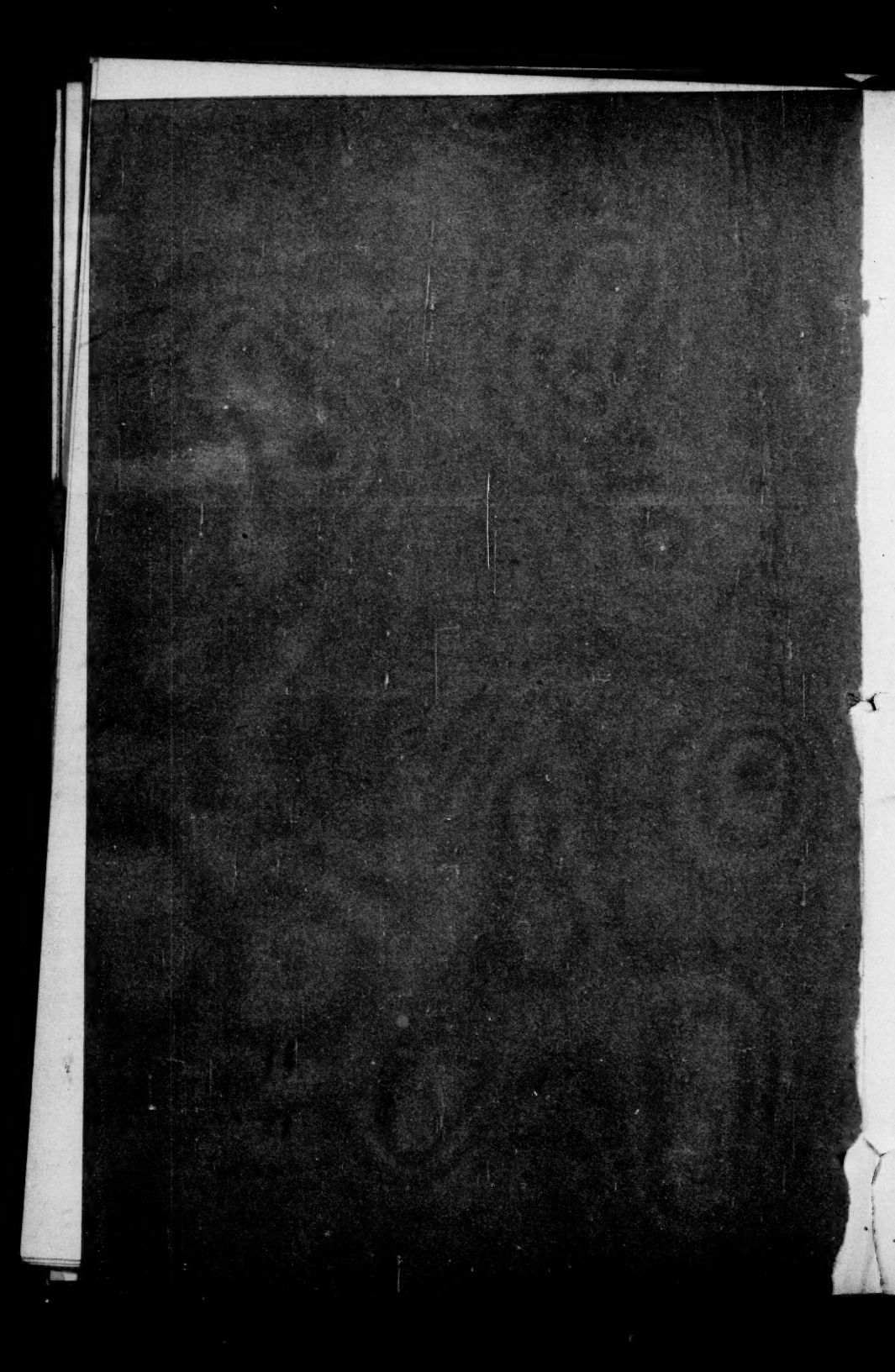
THE UNITED STATES, PLAINTIFF,

vs.

JAMES H. BRITTON AND BARTON BATES.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 18, 1880.



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1 UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the circuit court of the United States in and for said district.

Be it remembered that on the 30th day of August, A. D. 1879, there was filed in the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri a certain transcript of record, in words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

IN CASE NO. 1477 OF THE UNITED STATES, plaintiff,
against
JAMES H. BRITTON & MARTIN BATES, defendants.

Be it remembered that on the 20th day of January, A. D. 1879, the grand jury of the United States of America in and for the eastern district of Missouri returned into the district court of said United States in and for said eastern district an indictment in the above-entitled case, which said indictment is in the words and figures following, to wit:

Indictment.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court of the United States for the eastern district of Missouri, at the November term thereof, A. D. 1878.

2 FIRST COUNT.—The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire in and for the eastern district of Missouri, on their oaths, present that on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and seventy-six, at said district, James H. Britton, late of said district, being then and there and at the times hereinafter mentioned president and one of the directors of a certain national banking association then and there known as the National Bank of the State of Missouri, in St. Louis, which said association had been theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there and at the times hereinafter mentioned acting and carrying on the business of banking in the city of St. Louis, within said district, under the said act of Congress and the acts amendatory thereof, and Barton Bates, late of said district, being then and there and at the times hereinafter mentioned vice-president and one of the directors of said association, did conspire, combine, confederate, and agree with each other and with certain other persons to the jurors aforesaid unknown, to wilfully misapply a large sum of money belonging to and

the property of said association, to wit, the sum of eighty-seven
3 thousand five hundred dollars, by means of procuring to be made, on the thirtieth day of June of said year, by the board or directors of said association, a dividen*t* of three and one-half per centum upon the capital stock of said association, said capital stock being then and there the sum of two millions five hundred thousand dollars, that is to say, by the apportionment out of the moneys of said association to each and every person then and there owning shares of the capital stock of said association the sum of three dollars and fifty cents upon each and every of said shares, which said divident, so to be made as aforesaid, was to be, on the said thirtieth day of June aforesaid, greater in the sum of eighty-seven thousand five hundred dollars than the net profits of said association on hand at the time last aforesaid after deducting from said net profits the amount of the losses and bad debts of said association existing at the said time last aforesaid.

And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the said thirtieth day of June aforesaid, the said James H. Britton, in pursuance of and in order to effect the object of said conspiracy, combination, conderacy, and agreement so had as aforesaid, did, at said district, as one of the directors of said association as aforesaid, assent to the making of a certain purported order of the board of directors of said association, which said pur-
4 ported order was in the words and figures following, that is to say:

"ST. LOUIS, *June 30th*, 1876.

"Present, Mess. Britton and Walsh, Mr. Bates assenting on the 29th.

"Ordered, that a dividend of 3½ % be declared, payable on the 10th proximo, and that the transfer books be closed till that date.

"Attest: EDW. P. CURTIS, *Cash*."

And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the eighth day of July, in the year last aforesaid, the said James N. Britton, in further pursuance of and in order to effect the object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, collect and receive from said association, as a part of said dividend, a large sum of money, to wit, the sum of five thousand three hundred and ninety-seven dollars.

And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the eleventh day of July, in the year last aforesaid, the said Barton Bates, in further pursuance of and in order to effect the object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, collect and receive from said association, as a part of said dividend, a large sum of money, to wit, the sum of four thousand one hundred and twelve dollars, con-
trary to the form of the statute in such case made and pro-
5 vided, and against the peace and dignity of the United States.

SECOND COUNT.—And the jurors aforesaid, on their oaths aforesaid, do further present that on the 29th day of June, in the year of our Lord one thousand eight hundred and seventy-six, at said district, James H. Britton, late of said district, being then and there and at the times hereinafter mentioned president and one of the directors of a certain national banking association, then and there known as the National Bank of the State of Missouri, in St. Louis, which said association had been theretofore created and organized under and by virtue of an act

of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there and at the times hereinafter mentioned acting and carrying on the business of banking in the city of St. Louis, within said district, under the said act of Congress and the acts amendatory thereof, and Barton Bates, late of said district, being then and there and at the times hereinafter mentioned vice-president and one of the directors of said association, did conspire, combine, confederate, and agree with each other and with certain other persons to the jurors aforesaid unknown

6 to wilfully misapply, with intent then and there to injure and defraud the said association and certain persons to the jurors aforesaid unknown, a large sum of money belonging to and the property of said association, to wit, the sum of eighty-seven thousand five hundred dollars, by means of procuring to be made, on the thirtieth day of June of said year, by the board of directors of said association, a dividen*t* of three and one-half per centum upon the capital stock of said association, said capital stock being then and there the sum of two millions five hundred thousand dollars, that is to say, by the apportionment out of the moneys of the association to each and every person then and there owning shares of the capital stock of said association the sum of three dollars and fifty cents upon each and every of said shares, which said dividend, so to be made as aforesaid, was to be, on the said thirtieth day of June aforesaid, greater in the sum of eighty-seven thousand five hundred dollars than the net profits of said association on hand at the time last aforesaid after deducting from said net profits the amount of the losses and bad debts of said association existing at said time last aforesaid.

And the jurors, on their oaths aforesaid, do further present that afterwards, to wit, on the thirtieth day of June, in the year of our Lord one thousand eight hundred and seventy-six, the said James H. Britton,

7 in pursuance of and in order to effect the object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, as one of the directors of said association as aforesaid, assent to the making of a certain purported order of the board of directors of said association, which said purported order was in words and figures following, that is to say:

"ST. LOUIS, *June 30th*, 1876.

"Present, Mess. Britton and Walsh, Mr. Bates assenting on the 29th.

"Ordered, that a dividend of 3½ % be declared, payable on the 10th proximo, and that the transfer books be closed till that date.

"Attest: EDW. P. CURTIS, *Cash*."

And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the eighth day of July, in the year last aforesaid, the said James H. Britton, in further pursuance of and in order to effect the object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, collect and secure from said association, as a part of said dividend, a large sum of money, to wit, the sum of five thousand three hundred and ninety-seven dollars.

And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the eleventh day of July, in the year of our Lord one thousand eight hundred and seventy-six, the said Barton

Bates, in further pursuance of and in order to effect the object of
8 said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, collect and receive from said association as a part of said dividend a large sum of money, to wit, the sum of four thousand one hundred and twelve dollars, contrary to the form of the statute of the United States in such case made and provided, and against their peace and dignity.

THIRD COUNT.—And the jurors aforesaid, on their oaths aforesaid, do further present that on the 29th day of June, in the year of our Lord one thousand eight hundred and seventy-six, at said district, James H. Britton, late of said district, being then and there and at the times hereinafter mentioned president and one of the directors of a certain national banking association, then and there known as the National Bank of the State of Missouri, in St. Louis, which said association had been theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there and at the times hereinafter mentioned acting and carrying on the business of banking in the city of St. Louis, within said district, under the said act of Congress and the acts amendatory thereof,
9 and Barton Bates, late of said district, being then and there and at the times hereinafter mentioned vice-president and one of the directors of said association, did conspire, combine, confederate, and agree with each other and with certain other persons to the jurors aforesaid unknown to wilfully misapply a large sum of money belonging to and the property of said association, to wit, the sum of eighty-seven thousand five hundred dollars, by means of procuring the board of directors of said association to make, on the thirtieth day of June of said year, for and in behalf of said association, a dividend, to be paid out of the moneys and funds of said association, of three and one-half per centum upon the capital stock of said association, which said capital stock then and there amounted to the sum of two millions five hundred thousand dollars, and which said dividend so to be made and paid as aforesaid, was to be, on said thirtieth day of June aforesaid, to an amount greater in the sum of eighty-seven thousand five hundred dollars than the net profits of said association on hand on said thirtieth day of June aforesaid after deducting from the said net profits the losses and bad debts of said association existing on the said thirtieth day of June aforesaid.

And the jurors aforesaid, on their oaths aforesaid, do further
10 present that, in pursuance of and in order to effect the object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, the said James H. Britton afterwards, to wit, on the said thirtieth day of June, in the year of our Lord one thousand eight hundred and seventy-six, did, at said district, as one of the directors of said association as aforesaid, assent to the making of a certain purported order of the board of directors of said association, which said purported order was in the words and figures following, that is to say:

"ST. LOUIS, *June* 30, 1876.

"Present, Mess. Britton and Walsh, Mr. Bates assenting on the 29th.

"Ordered, that a dividend of 3½ % be declared, payable on the 10th proximo, and that the transfer books be closed till that date.

"Attest: EDW. P. CURTIS, *Cash.*"

And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the eighth day of July, in the year last aforesaid, the said James H. Britton, in further pursuance of and in order to effect the object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, collect and receive from said association, as a part of said dividend, a large sum of money, to wit, the sum of five thousand three hundred and ninety-seven dollars.

And the jurors aforesaid, on their oaths aforesaid, do further
11 present that afterwards, to wit, on the eleventh day of July, in the year last aforesaid, the said Barton Bates, in further pursuance of and in order to effect the object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, collect and receive from said association, as a part of said dividend, a large sum of money, to wit, the sum of four thousand one hundred and twelve dollars, contrary to the form of the statute of the United States in such case made and provided, and against their peace and dignity.

FOURTH COUNT.—And the jurors aforesaid, on their oaths aforesaid, do further present that on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and seventy-six, at said district, James H. Britton, late of said district, being then and there and at the times hereinafter mentioned president and one of the directors of a certain national banking association, then and there known as the National Bank of the State of Missouri, in St. Louis, which said association had been theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, in the year of our Lord one thousand eight hundred and sixty-four, and which said association was then and there and at the times hereinafter mentioned,
12 acting and carrying on the business of banking in the city of St. Louis, within said district, under the said act of Congress and the acts amendatory thereof, and Barton Bates, late of said district, being then and there and at the times hereinafter mentioned vice-president and one of the directors of said association, did conspire, combine, confederate, and agree with each other and with certain persons to the jurors aforesaid unknown to wilfully misapply, with intent then and there to injure and defraud the said association and certain persons to the jurors aforesaid unknown, a large sum of the money belonging to and the property of said association, to wit, the sum of eighty-seven thousand five hundred dollars, by means of procuring the board of directors of said association, to make on the thirtieth day of June, in the year of our Lord one thousand eight hundred and seventy-six, for and in behalf of said association, a dividend, to be paid by said association out of the moneys and funds of said association, of three and one-half per centum upon the capital stock of said association, which said capital stock then and there amounted to the sum of two millions five hundred thousand dollars, and which said dividen*t* so to be made and paid as aforesaid was to be, on the said thirtieth day of June aforesaid, to an amount greater in the sum of eighty-seven thousand five hundred
13 dollars than the net profits of said association on hand on said thirtieth day of June aforesaid after deducting from the said net profits the losses and bad debts of said association existing on the said thirtieth day of June, aforesaid.

And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the said thirtieth day of June aforesaid, the

said James H. Britton, in pursuance of and in order to effect the object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, as one of the directors of said association, assent to the making of a certain purported order of the board of directors of said association, which said purported order was in the words and figures following, that is to say:

"ST. LOUIS, *June 30th*, 1876.

"Present, Mess. Britton and Walsh, Mr. Bates assenting on the 29th.

"Ordered, that a divident of 3½ % be declared, payable on the 10th proximo, and that the transfer books be closed till that date.

"Attest: EDW. P. CURTIS, *Cash*."

And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the eighth day of July, in the year last aforesaid, the said James H. Britton, in further pursuance of and in order to effect the object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, collect and receive
14 from said association, as a part of said dividend, a large sum of money, to wit, the sum of five thousand three hundred and ninety-seven dollars.

And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the eleventh day of July, in the year last aforesaid, the said Barton Bates, in further pursuance of and in order to effect *and* object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, collect and receive from said association, as a part of said dividend, a large sum of money, to wit, four thousand one hundred and twelve dollars, contrary to the form of the statutes of the United States in such case made and provided, and against their peace and dignity.

FIFTH COUNT.—And the jurors aforesaid, on their oaths aforesaid, do further present that heretofore, to wit, on the thirtieth day of June, in the year of our Lord one thousand eight hundred and seventy-six, the National Bank of the State of Missouri, in St. Louis, was a national banking association theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and was, at the time first
15 above mentioned, and at the times hereinafter mentioned, acting and carrying on the business of banking in the city of St. Louis, within said district; that on the said thirtieth day of June, in the year hereinbefore first mentioned, there was due and owing as debts to said associations from and on account of certain persons a certain large sum of money, that is to say, from James B. Eads and Barton Bates, then and there executors of the estate of Charles L. Dickson, deceased, the sum of fifteen thousand eight hundred and eighty-one dollars and eighteen cents; from James B. Eads and Barton Bates, then and there trustees of the estate of said Dickson, deceased, the sum of seventy-five thousand dollars; from Richard L. Dickson the sum of one hundred and thirty-two thousand six hundred and seventy-three dollars and forty-nine cents; from John A. Dillon the sum of seventy-three thousand dollars; from John *John* A. Ubsdell the sum of one hundred and ninety-five thousand nine hundred and seventy-eight dollars and fifty cents; from James B. Eads the sum of two hundred and seventy-six thousand nine hundred and eighty-two dollars

and fifty-three cents; from Barton Bates the sum of one hundred and thirty-three thousand six hundred and twenty-six dollars and eighteen cents; from George F. Britton the sum of twenty-five thousand three hundred and nineteen dollars and thirty-five cents;
16 from Alfred M. Britton the sum of one hundred and eighty-three thousand two hundred and thirty-nine dollars and ten cents; from James F. Haw the sum of eighty-five thousand five hundred dollars; from Barrett Williams the sum of twenty-two thousand dollars; from George C. Fabian the sum of seventy-six thousand dollars; from John J. Roe the sum of one hundred thousand dollars; from C. W. Bates, whose christian name is to said jurors unknown, the sum of thirty-three thousand two hundred and sixty-two dollars; and from certain other persons to the said jurors unknown a large sum, to wit, two hundred and seventy-six thousand one hundred and twenty-eight dollars and eighty-seven cents, which said sums of money, so as aforesaid due and owing to said association, then and there amounted in the aggregate to a large sum, to wit, seventeen hundred and forty-one thousand seven hundred and thirteen dollars and eighty-seven cents, and which said sums so as aforesaid due said association from said persons respectively were then and there debts, as aforesaid, upon which interest was then and there past due for a period of six months next preceding said thirtieth day of June, in the year last aforesaid, and then unpaid, and which said debts, so as aforesaid due said association, were not then and there well secured, and were not then and there in process of collection.

17 And the jurors aforesaid, on their oaths aforesaid, do further present that on said thirtieth day of June, in the year of our Lord one thousand eight hundred and seventy-six, at said district, James H. Britton, late of said district, being then and there president and a director of said association, and Barton Bates, late of said district, being then and there vice-president and a director of said association, did conspire, combine, confederate, and agree together with each other and with certain other persons to the jurors aforesaid unknown to wilfully misapply, with intent on the part of them, the said James H. Britton and Barton Bates, to injure and defraud the said association and certain persons to the jurors aforesaid unknown, a large sum of money, to wit, the sum of eighty-seven thousand five hundred dollars, then and there belonging to said association, by means of procuring to be made on the said thirtieth day of June, in said year, by the board of directors of said association, a dividend of three and one-half per centum upon the capital stock of said association, said capital stock being then and there the sum of two million five hundred thousand dollars, that is to say, by the apportionment out of the moneys of said association to each and every person then and there owning shares of the capital stock of said
18 association the sum of three dollars and fifty cents upon each and every of said shares, which said dividend so to be made as aforesaid was, as they, the said James H. Britton and Barton Bates, then and there well knew, largely in excess of the net profits of said association then on hand and held by said association after the deduction from said net profits of said sum of seventeen hundred and forty-one thousand seven hundred and thirteen dollars and eighty-seven cents, bad debts, as aforesaid, that is to say, the said amount of said dividend was then and there in excess of the net profits then and there remaining after said deduction in a large sum, to wit, eighty-seven thousand five hundred dollars.

And the jurors aforesaid, in their oaths aforesaid, do further present

that afterwards, to wit, on the said thirtieth day of June aforesaid, the said James H. Britton, in pursuance of and in order to effect the object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, as one of the directors of said association, assent to the making of a certain purported order of the board of directors of said association, which said purported order was in the words and figures following, that is to say:

"ST. LOUIS, *June 30th*, 1876.

"Present, Messrs. Britton and Walsh, Mr. Bates assenting on the 29th.

"Ordered, that a divident of 3½% be declared, payable on the 10th proximo, and that the transfer books be closed till that date.

"Attest: EDW. P. CURTIS, *Cash.*"

19 And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the eighth day of July, in the year last aforesaid, the said James H. Britton, in further pursuance of and in order to effect the object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, collect and receive from said association, as a part of said dividend, a large sum of money, to wit, the sum of five thousand three hundred and ninety-seven dollars.

And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the 11th day of July, in the year last aforesaid, the said Barton Bates, in further pursuance of and in order to effect the object of said conspiracy, combination, confederacy, and agreement so had as aforesaid, did, at said district, collect and secure from said association as a part of said dividend a large sum of money, to wit, four thousand one hundred and twelve dollars, contrary to the form of the statute of the United States in such case made and provided, and against their peace and dignity.

WILLIAM H. BLISS,
Attorney of the United States for the Eastern District of Missouri.

And afterwards, at a regular stated term of the district court of the United States in and for the eastern district of Missouri, begun
20 and holden at the city of St. Louis, in said eastern district, *in* the first Monday, the fourth day, of November, in the year of our Lord eighteen hundred and seventy-eight, the following proceedings were had of record in this case on Monday, the twentieth day of January, A. D. eighteen hundred and seventy-nine, to wit:

Arraignment and plea.

THE UNITED STATES, PLAINTIFF, *ag'st* JAMES H. BRITTON AND BARTON BATES, DEFENDANTS.	No. 1477. Indictment for conspiracy to commit offence, &c. Section 5440 Rev. Stat.

This day comes the United States, by district attorney, and the said defendants being personally present in court, on motion of the district attorney, it is ordered that the said defendants be arraigned upon the indictment herein against them, and thereupon the said defendants waived the reading of said indictment and formal arraignment thereon,

and pleaded not guilty to the charges as contained in said indictment. And the said defendants not being ready for trial on this day, on the application of said defendant Barton Bates, he is allowed to give bail for his appearance herein, the amount of such bail being fixed by the court at the sum of ten thousand dollars.

Recognizance of def't B. Bates.

And thereupon the said defendant Barton Bates, as principal, and Girard B. Allen, George S. Drake, and Charles Gibson, as sureties, personally appeared in open court and acknowledged themselves to owe and be indebted to the United States of America, jointly and
21 severally, in the sum of ten thousand dollars, to be levied of their respective goods and chattels, lands and tenements, and to the said United States of America rendered; conditional, however, to be void if he, the said defendant Barton Bates, shall personally be and appear at and before this court on the first Monday, the fifty day, of the month of May next (1879) to answer to the charges as contained in said indictment herein against him, and if he shall appear from day to day thereafter, and from time to time, or at any time at any future term or day of the term of the court as may be ordered by said court until discharged upon the said indictment herein; and further, if he, the said Barton Bates, shall then and there obey any and all orders which may be made by this court in relation to said indictment and not depart from said court without the leave thereof. And it is ordered that this cause be now continued until the next term of this court.

And afterwards, at a regular stated term of the district court of the United States in and for the eastern district of Missouri, begun and holden at the city of Saint Louis, in said eastern district, on the first Monday, the fifth day, of May, A. D. eighteen hundred and seventy-nine, the following further proceedings were had of record in this case on Tuesday, the sixth day of May, eighteen hundred and seventy-nine, to wit:

22 *Plea not guilty withdrawn, &c.*

THE UNITED STATES, PLAINTIFF, *vs.* JAMES H. BRITTON AND BARTON BATES, DEFENDANTS.	No. 1477. Indictment for violation of section 5440 of Revised Statutes of the U. S.

This day comes the United States, by district attorney, and the said defendants being present in court in compliance with the recognizances heretofore entered into by them herein, the said defendants, with the leave of the court, withdraw the pleas of not guilty heretofore entered by them herein, and on the application of said defendants, by their attorneys, leave is given them to file their demurrers to the said indictment herein; and thereupon the said defendants, by attorneys, file their separate demurrers to said indictment in this cause, and it is ordered that the said demurrers be, and the same are hereby, now set down for argument on Thursday, the fifteenth day of May next, 1879.

The demurrer so filed by James H. Britton, as aforesaid, is in the words and figures following, to wit:

Demurrer of J. H. Britton.

In the district court of the United States in & for the eastern district of Missouri.

THE UNITED STATES *against* JAMES H. BRITTON AND BARTON BATES. } No. 1477.

And now comes the said defendant, James H. Britton, in his own proper person, and having heard the said indictment read, says
23 that the said indictment and the matters contained, in manner and form as the same are above stated and set forth, are not sufficient in law, and that he is not bound to answer the same, and this he is ready to verify. Wherefore he prays judgment, and that by the court he may be discharged from the said premises in the said indictment specified.

JOHN B. HENDERSON,
CHESTER H. KRUM,
Attorneys for said Defendant Britton.

The demurrer filed by Barton Bates, as aforesaid, is in the words and figures following, to wit:

Demurrer of B. Bates.

THE UNITED STATES *against* BARTON BATES, JOINTLY INDICTED WITH James H. Britton, for conspiracy. } Indictment No. 1477. Nov'b'r t., 1878.

District court of United States in the eastern dist. of Missouri, May t., 1879.

And now at this day comes the said Barton Bates, in his own proper person, and the said indictment being seen and read by him, he says that the same and the matters therein contained, in manner and form as they are above stated and set forth, are not sufficient in law, and that he, the said Barton Bates, is not bound by the law of the land to answer the same, and this he is ready to verify. Wherefore the want of a sufficient indictment in this behalf the said Barton Bates prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said indictment contained.

BARTON BATES.
GLOVER & SHEPLEY, with
HENDERSON & SHIELDS,
His Attorneys.

24 And afterwards, at said last-named regular stated term of said district court, begun and holden as aforesaid, the following further proceedings were had of record in this case on Friday, the sixteenth day of May, A. D. eighteen hundred and seventy-nine, to wit:

Order remit'ing indictment to circuit court.

THE UNITED STATES, PLAINTIFF, *ag'st* JAMES H. BRITTON AND BARTON Bates, defendants. } No. 1477. Indictment for violation of section 5440 of the Revised Statutes of the United States.

This day comes the United States, by district attorney, and on the motion of said attorney, it is ordered that the indictment pending in

this court in the above entitled cause be, and hereby is, now remitted and transferred to the next regular stated term and session of the circuit court of the United States in and for the eastern district of Missouri, to be begun and holden at the city of St. Louis, in said district, on the third Monday, the fifteenth day, of September next (1879), for proceedings thereon according to law. And it is also ordered that the said defendants, James H. Britton and Barton Bates, be and appear at and before the said circuit court on said third Monday of September next, and at said regular stated term thereof, then and there to answer to the charges as contained in the said indictment herein against them, and not depart from said circuit court without leave thereof, in obedience to the recognizance heretofore entered into by them in said
25 cause. And it is further ordered that the clerk of this court make out and certify to the said circuit court a full and complete transcript of the record and proceedings in said cause.

26 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Joseph H. Clark, clerk of the district court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto annexed to be a true transcript of the record and proceedings in case No. 1477, A. D. 1879, of the United States, plaintiff, against James H. Britton and Barton Bates, defendants, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this 18th day of August, in the year of our Lord eighteen hundred and seventy-nine.

[SEAL.] JOSEPH H. CLARK,
Clerk of said Court.

27 And afterwards, to wit, on the tenth day of March, A. D. 1880, at a regular stated term of the circuit court of the United States in and for the eastern district of Missouri, the following proceedings were had and appear of record in said cause, to wit:

Ordered, that the following be entered of record nunc pro tunc of February 4th, 1880.

THE UNITED STATES, PLAINTIFF,
vs.
JAMES H. BRITTON AND BARTON BATES, DEFENDANTS.

Now, at this day comes the United States, by William H. Bliss, esquire, district attorney, and the defendants being in court in compliance with their recognizances herein, and by their attorneys, this cause came on for hearing upon the demurrer of said defendants the indictment herein, and upon the questions of law arising upon said demurrer the judges were divided and opposed in opinion. It is therefore ordered that the clerk of this court make out and certify to the next term of the Supreme Court of the United States a transcript of the record and proceedings in this cause as fully as the same are described in the certificate of division this day filed.

MEMO.—His honor Judge Treat took no part in the hearing of this case.

Said certificate of division is in words and figures following, to wit:

28 *Certificate of division.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in & for said district.

UNITED STATES
vs
JAMES H. BRITTON AND BARTON BATES. } No. 1535.

This was an indictment under section 5440 of the Revised Statutes of the United States, for conspiracy to wilfully misapply, in violation of section 5209 of said Revised Statutes, moneys of the National Bank of the State of Missouri, of which bank the defendant James H. Britton was president and both defendants were directors. The following is a copy of the indictment:

(See page 1.)

To the said indictment a demurrer was interposed as follows:

(See pages 22 & 23.)

And the said demurrer to said indictment coming on to be heard at this term, the following questions arose:

First. Whether, under section 5209 of the Revised Statutes of the United States, it was necessary to aver that the alleged conspiracy was entered into with intent to injure and defraud, and whether the several counts in this indictment not containing the said allegation are good and sufficient in law.

29 Second. Whether it was necessary in this indictment, in addition to the allegations charging the conspiracy to wilfully misapply certain funds and property of the association by means of procuring to be made by the board of directors a dividend as alleged in the indictment, to further allege that said dividend was in pursuance of said conspiracy declared and made; and if so, whether the same is sufficiently charged therein, and whether it was also necessary to allege that said dividend was fraudulent when declared and also when paid.

Third. Whether the failure to aver that the conspiracy was entered into with intent to injure and defraud the association vitiates the first and third counts of said indictment.

Fourth. Whether, under section 5209 of the Revised Statutes of the United States, it was necessary in this indictment to charge that the funds alleged to have been misapplied had been previously entrusted to the possession of the defendants.

On which questions the judges were divided and opposed in opinion; whereupon, upon motion of the plaintiff, by its attorney, that *that* the said points upon which the disagreement hath happened may during the term be stated under the direction of the judges and certified under the seal of the court to the Supreme Court to be finally decided, it is ordered that the foregoing state of the pleadings and questions

30 be certified according to the request of plaintiff, by its attorney, and as required by the law in that case made and provided.

Given under our hands and seals this fourth day of February, A. D. 1880.

(S'g'd) GEO. W. McCRARY. [SEAL.]
(S'g'd) HENRY C. CALDWELL. [SEAL.]

31 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the writing hereto attached to be a true transcript of the record and proceedings in case No. 1535 of the United States, plaintiff, against James H. Britton and Barton Bates, defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this second day of July, in the year of our Lord eighteen hundred and eighty.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY,
Deputy.

(Indorsed:) No. 1535. United States circuit court, eastern district of Missouri. United States against James H. Britton and Barton Bates. Duly certified transcript in the above-entitled cause.

(Indorsement on cover:) No. 410. The United States, plaintiff, vs. James H. Britton and Barton Bates. E. Missouri C. C. U. S. Filed 18th October, 1880.